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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Marc V. Marini
Serial No.:	10/760,110
Conf. No.:	7346
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For:	TOOL-LESS BLADE CLAMPING APPARATUS FOR A RECIPROCATING TOOL
Art Unit:	3722
Examiner:	Talbot, Michael

**APPELLANTS' REPLY BRIEF ON APPEAL
PURSUANT TO 37 CFR § 41.41**

This Reply Brief is in response to the Examiner's answer dated September 10, 2008.

Appellants, by and through the undersigned, wish to express appreciation for the examiner's withdrawal of the 102(e) rejection of claims 1-3 based upon the Kramer '548

patent. This leaves the rejection of claims 1-4 under § 102(b) as being anticipated by Takeuchi '026 (hereinafter "Takeuchi") remaining at issue. The examiner indicates that appellants had not properly argued the rejection of claims 1-4 and appellants regretfully agree. The appeal brief was directed to the rejection of claims 1-4 based upon the embodiment of Figs. 1-7 and not the embodiment of Figs. 8-12 which includes a blade having shoulders.

Appellants have reviewed 37 CFR 41.41 and believe that it is permissible and proper to argue for the patentability of these claims 1-4 in this reply brief because no new or non-admitted amendments, affidavits or other evidence is relied on or is necessary. The law of anticipation as set forth in appellants' appeal brief is applicable to the examiner's rejection based upon the embodiment in Figs. 8-12 of Takeuchi '026 (which is the publication of the Kakauchi '039 patent that was relied upon in previous rejections).

Additionally, a very recent Federal Circuit decision holds that a proper anticipation rejection must comply with additional requirements. More particularly, in *Net MoneyIN, Inc. v. VeriSign, Inc.*, ___ F.3d ___ (Fed. Cir. 2008)(Linn, J.), distinguishing *Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339, 1348 (Fed.Cir.2004), **the Court held that the test for anticipation by a single reference under 35 USC § 102 requires that a single reference not only disclose all elements of the invention, but that the elements be "arranged or combined in the same way as in the claim".** (emphasis added)

The Court explains: “[A]rranged as in the claim’ is readily understood in relation to claims drawn to things such as ingredients mixed in some claimed order. In such instances, a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate, because the reference would be missing any disclosure of the limitations of the claimed invention ‘arranged as in the claim.’ But the ‘arranged as in the claim’ requirement is not limited to such a narrow set of “order of limitations” claims. **Rather, our precedent informs that the ‘arranged as in the claim’ requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order. The test is thus more accurately understood to mean ‘arranged or combined in the same way as in the claim.’”** (Emphasis added)

It is believed that Figs. 8-12 embodiment of Kakauchi fails to anticipate, teach or suggest claim 1, because it does not show all of the limitations of the claims as is required by *Net MoneyIN, Inc. v. VeriSign, Inc.* More particularly, claim 1 is set forth below with emphasis added to particularly point out the elements of the claim that are not anticipated, taught or suggested by Kakauchi.

1. A tool-less blade clamping apparatus for a reciprocating tool of the type which has a reciprocating plunger with at least one radially oriented aperture and a blade receiving slot at its forward end for receiving a blade of the type which has a shank portion with a hole and outwardly extending shoulders on opposite sides thereof between the distal end of the shank and a blade portion, the shank being configured to be inserted in the slot, the apparatus being configured to be attached to the plunger and having an opening for receiving the blade shank therein and in the slot, said apparatus comprising:

said apparatus having an unclamped position and a clamped position wherein the shank portion of the blade can be inserted into said opening when it is in said unclamped position and be securely retained therein with the shoulders engaging the apparatus when in said clamped position;

said apparatus being biased toward said clamped position;

said apparatus being configured to maintain its unclamped position when placed in said unclamped position;

said apparatus being released when the shoulders of the blade shank portion engage said apparatus as the shank portion is inserted into said opening and slot a predetermined distance to thereby place said apparatus in said clamped position;

said apparatus engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position.

(emphasis added)

As set forth in the claim, the toolless blade clamping apparatus comprises, *inter alia*, said apparatus being released when the shoulders of the blade shank portion engage said apparatus as the shank portion is inserted into said opening in a slot a predetermined distance to thereby place said apparatus in said clamped position and said apparatus engaging the shoulders of the blade and pushing the blade shank portion outwardly when said apparatus is moved to said unclamped position. It is believed that Kakauchi fails to anticipate, teach or suggest either of these elements.

The examiner has attempted to apply Kakuchi to this claim language but paragraphs 0072 and 0073 describe the operation of this embodiment and the description demonstrates that it fails to anticipate, teach or suggest claim 1. More particularly, these paragraphs are set forth below.

[0072] An auxiliary sleeve 59 also may be disposed between the rod 52 and the blade lock operating sleeve 53. An auxiliary pin 60 may be disposed between the auxiliary sleeve 59 and the rod 52. The auxiliary sleeve 59 and the rod 52 may be integrally formed and preferably have a unitary or seamless construction. The blade clamping pin 51 is inserted into

the support hole 52c through a hole 59a of the auxiliary sleeve 59. The hole 59a preferably has an inner diameter that is larger than the diameter of the blade clamping pin 51. The spring 58 is positioned within the hole 59a.

[0073] As shown in FIG. 12, a shoulder 3c of the blade 3 contacts the front surface (i.e., the left surface in FIGS. 8 and 10) of the auxiliary sleeve 59 and therefore, the blade 3 can be stably and reliably mounted. During operation of the reciprocating saw 1, vibrations and/or the cutting resistance exerted on the blade 3 may be received by the auxiliary sleeve 59 without transmitting such vibrations and/or the cutting resistance to the blade clamping pin 51. In other words, outside forces preferably are not transmitted to the blade clamping pin 51 due to the auxiliary sleeve 50 that is integrated with the rod 52. Therefore, smooth movement of the blade clamping pin 51 can be ensured.

The description clearly indicates that the auxiliary sleeve 59 is either integrally formed or attached to the rod 52. The auxiliary sleeve 59 is what the shoulders of the blade of this embodiment contact and the **shoulders do not engage the apparatus as the shank portion is inserted into said opening** and slot a predetermined distance and thereby place said apparatus in said clamped position. **The shoulders also do not push the shank portion outwardly when said apparatus is moved to said unclamped position.** Moreover, paragraph 0073 states purported advantages of the particular operation of this embodiment in that vibrations and/or cutting resistance exerted on the blade 3 may be received by the auxiliary sleeve 59 without transmitting such vibrations and/or cutting resistance to the blade clamping pin 51. The very differences are stated to be important considerations in the Kakauchi structure and operability. For these reasons, it is believed that claim 1 is not anticipated, taught or suggested by the Kakauchi reference.

With regard to claim 4, it is set forth below and has similar elements that are emphasized which are not believed to be anticipated, taught or suggested by Kakauchi.

4. A tool-less blade clamping apparatus for a reciprocating tool of the type which has a reciprocating plunger with at least one radially oriented aperture and a blade receiving slot at its forward end for receiving a blade of the type which has a shank portion with a hole and outwardly extending shoulders on opposite sides thereof between the distal end of the shank and a main portion, the shank being configured to be inserted in the slot, the apparatus being configured to be attached to the plunger and having an opening for receiving the blade shank therein and in the slot, said apparatus comprising:

said apparatus having an unclamped position and a clamped position wherein the shank portion of the blade can be inserted into said opening when it is in said unclamped position and be securely retained therein with the shoulders contacting said apparatus when in said clamped position;

at least one spring biasing said apparatus toward said clamped position;

a releasable retaining mechanism for holding said apparatus in its unclamped position when placed in said unclamped position;

said retaining mechanism being released when the shoulders of the blade engages said apparatus as the blade shank portion is inserted into said opening and slot a predetermined distance to thereby place said clamping apparatus in said clamped position;

said clamping apparatus engaging the shoulders and pushing the blade shank portion outwardly therefrom when said retaining mechanism is moved to said unclamped position.

(emphasis added)

Kakauchi similarly does not have said retaining mechanism being released when the shoulders of the blade engages said apparatus as the blade shank portion is inserted into said opening and slotted predetermined distance to thereby place said clamping apparatus in said clamped position nor does it have said clamping apparatus engaging the shoulders and pushing the blade shank portion outwardly therefrom when said retaining mechanism is moved to said unclamped position. Thus, the arguments that have been made with regard to claim 1 therefore equally apply to claim 4.

In addition, applicants respectfully request allowance of claims 15-25 which depend from claim 4. These dependent claims necessarily incorporate the features of the claims from which they depend in addition to defining other features and/or functionality and also should be allowed.

For the above reasons, applicants respectfully request the Board to reverse the outstanding rejection. The case should then be permitted to pass to issue.

Respectfully submitted,

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